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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 897

PETER SKONTOS, also known as Panagiotis Skoundrianos,

Petitioner,

vs.

JOHN C. GEKAS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI IN BEHALF OF RESPONDENT.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI IN BEHALF OF RESPONDENT.

OPINIONS AND ORDERS.

1. Opinion of the Trial Court (Abst. 54-61).

2. Opinion of the Appellate Court (Petitioner's Brief 59-66).

3. Order of the Trial Court Dismissing Case (Abst. 61).

4. Order of the Supreme Court of Illinois Transferring the Case to the Appellate Court of Illinois—First District (Respondent's Brief, Page 11a).

5. Judgment of the Appellate Court affirming judgment of Trial Court. (Respondent's Brief, Page 1a)

6. Order of the Supreme Court of Illinois Dismissing Petitioner's Second Appeal (Respondent's Brief, Page 3a).

JURISDICTION.

The Petition of the Petitioner and his certified copies of his brief and abstract, together with the certified copies of the motion of the respondent, and objections of the petitioner thereto, filed in the Supreme Court of Illinois, do not present any ground upon which this Honorable Court can base its jurisdiction.

QUESTIONS PRESENTED.

The Petitioner presents thirty-two questions to be answered. Some of them are multiple. He confuses and misstates the issues therein. He creates false issues.

We respectfully suggest that the following questions are presented:

(a) Should this Honorable Court take jurisdiction of this case when the record clearly shows that no federal statute or the validity of any state statute as to its being repugnant to the federal laws or to the constitution of the United States was drawn in question at the Trial Court.

(b) Should the petition be allowed and the writ for certiorari be issued when it does not appear affirmatively in the record:

1. That there is a fairly debatable constitutional question involved.

2. That the constitutional or federal question was properly and timely raised and appropriately presented to the trial court for its consideration.

3. That the constitutional and federal question was raised in good faith.

4. That the court passed upon the constitutional and federal question.

5. That the court entered an order on the constitutionality or the validity of the statute and preserved the question for review.

6. That the Petitioner by his exception preserved any federal or constitutional question for review.

(c) (It does appear, however, in the record, that the court decided the case on questions and facts presented under the State law and nowhere did the Petitioner attack the validity of the civil practice act of Illinois.)

(d) Should the Petitioner's petition be granted and the writ of certiorari issued when the record (though partial and incomplete) shows:

1. That the Petitioner first appealed to the Supreme Court of Illinois requesting that it should take jurisdiction on constitutional grounds and the court refused to take jurisdiction of the case and transferred it to the Appellate Court, stating the court "is of the opinion, find and adjudge that this case was wrongfully appealed to this court."

2. That the Appellate Court was without jurisdiction to consider federal or constitutional questions under the law of the State of Illinois.

3. That the opinion of the Appellate Court of Illinois does not create or raise any federal or constitutional question and speaks only of the proper and sufficient application of the procedural laws of the State of Illinois.

4. That the judgment of the Appellate Court is completely silent about any federal or constitutional question.

5. That the Petitioner instead of filing a petition with the Supreme Court of Illinois for leave to appeal filed a direct appeal from the Appellate Court's judgment to the

Supreme Court of Illinois contending such appeal was a matter of right, thus failing to comply with the requirements of the Civil Practice Act of Illinois and the Rules of the Supreme Court of Illinois.

(e) Should the Petitioner's petition be granted and the writ of certiorari be issued when it is shown that the Supreme Court of Illinois declined to take jurisdiction of the case and entered an order dismissing petitioner's appeal because "it was not well taken."

(f) Should the Petitioner's petition be granted and the writ of certiorari be issued directed to the Supreme Court of Illinois when the record shows:

1. That on each occasion the court refused to take jurisdiction of the case and that it did not render an opinion or judgment on the case now considered, but entered only an order of dismissal of the appeal.

2. On its face to be defective and insufficient and to be not the record that was before the Trial and Appellate Courts, and when it is apparent that the abstract is partial, defective and incomplete.

(g) Should this honorable court allow Petitioner's petition and order the writ of certiorari be issued when the record shows that the alleged claims of the petitioner were barred by the statute of limitations?

STATEMENT OF THE CASE.

The Petitioner seeks a review of an order of dismissal entered by the Supreme Court of Illinois, refusing to take jurisdiction of the Petitioner's appeal. The Petitioner appealed directly from the Appellate Court of Illinois and failing to file a petition in the Supreme Court of Illinois for leave to appeal. He asserted that he is entitled as a matter of right to file a direct appeal in the Supreme Court because the case involved a constitutional question.

The memorandum opinion of the trial court (Abst. 54-61) and the opinion of the Appellate Court (Petitioner's Brief 59-66) sufficiently well state the case.

The Petitioner refers to his pleadings in the trial court to prove that he raised constitutional question therein. That is not correct. The record does not corroborate this contention. Six of his references speak of the defendant's conduct depriving him "of his civil rights", two of his references speak about the defendant's interference with "the due administration of justice" but in neither of those instances does he show or allege any fact that would substantiate his claim that he raised the constitutional question at the Trial Court, nor does he assert any fact or directly point out any authority holding that such statements contained in his Abstract are sufficient to raise a constitutional or federal question. He states conclusion and then proceeds to build his other fallacious conclusions thereon without any showing whatsoever where or how the opinions and orders of the Illinois courts were in error.

The respondent did not mention anywhere in his answer to the Petitioner's original complaint any constitutional

or federal question. He named what documents and pleadings were filed or what was done, but the Petitioner in five of his references (Abst. 34, 39, 40, 46, 50) that were made in his reply to the defendant's answer "denies" that the Petitioner was granted a hearing that was in conformity with due process and the requirements of equal protection of the law. His references to three places in the Abstract (Abst. 45, 47, 50) may be taken as affirmative general statements claiming that the petitioner was denied due process of law or equal protection of the law "guaranteed to him by the Federal and State Constitutions". In one of the statements (Abst. 45) he states that the Petitioner's commitment was "without notice and hearing as required by the constitutional guarantees of due process". He fails to point out what constitutional guarantee he means, State or Federal, and how they were violated and fails to point out the invalidity of any statute and why the orders and judgments of the courts of Illinois are void. The record contradicts him.

The Petitioner complains that equal protection of the laws was denied him but he does not point out a fact showing that he was unfairly and unjustly discriminated against. He complains he was denied due process of law. He had a lengthy hearing before the Trial Court (Brief, Page 63). He had two hearings before the Supreme Court of Illinois, one hearing before the Appellate Court of Illinois plus several hearings of several motions. He had his day in court but he does not tell us when, where or how or by what fact or act he was denied due process of law. He makes general statements of unfounded conclusions. The finding of the Appellate Court is that both the Probate and County Court of Cook County had jurisdiction of the Petitioner which he acknowledged but failed to present any fact to contradict that finding. He forgets that before he

can have a jury trial and introduce evidence he must have and he must state a cause of action. He omits important portions of the record and matters and evidence that were before the Trial and Appellate Courts and comes before this Honorable Court seeking to impose his version of the case contrary to the established practice and procedure and in disregard of the substantive law and in contradiction to the opinion, orders, and judgments of the Trial, Appellate and Supreme Courts of Illinois.

ARGUMENT.

The Petition and the defective certified portions of the record brought before this Honorable Court by the Petitioner do not present a single ground or reason for the issuance of the writ of certiorari. We are confident that your Honors, after reading the opinion of the Trial Court and of the Appellate Court, did not perceive a single wrong committed by the respondent, or a single breach of duty the respondent owed to the Courts of Justice, to the Petitioner, and to the Bar.

The Petitioner claims that he never was insane. (The record proves to the contrary) Why then did he wait more than seven and one-half years to commence an action against the Respondent whom he could summarily bring before the Courts of Justice? His present attorney filed a petition in the County Court of Cook County and restored him to citizenship in the year 1954. Why did he then wait more than four years to take action against the Respondent when his lawyer should and must have known that the statute of limitations bars their suit after two years? (The record shows he had no case)

In order to take a direct appeal to the Supreme Court of Illinois it is necessary, in cases like the instant case, that the validity of a statute or the construction of the constitution be involved. In order to have the Supreme Court of Illinois consider the validity of any statute as being repugnant to a Federal law or the constitution of the United States, it must be drawn in question clearly, and specifically pointed out in the trial court at the earliest opportunity; and indeed, this Honorable Court would not take jurisdiction of any case unless such matters are

drawn in question clearly and specifically, pointing out the particular statute and the particular section of the constitution claimed to have been violated. More than that is necessary to confer jurisdiction upon the Supreme Court of Illinois. There must be a fairly debatable constitutional question and not one that has been previously decided and determined by the Supreme Court of Illinois. That the constitutional question must be raised at the trial court. It must be presented for consideration by the court, and it is not sufficient to make general charges of unconstitutionality like the Petitioner has done in this case in an argument or in his brief in the Supreme Court. The question must be raised in good faith and the record must affirmatively show that the Court passed upon that question and entered an order upon it, and preserved its decision in the record for review, and the complaining party assigned error in the rendering of the judgment. The judgment of the court must be based upon the constitutional question and not upon any other issue or ground and it is not enough to raise and present the question to the court. The cases in footnote 1 clearly sustain us.(1)

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(1) *Wilson* v. *Prochnow*, 354 Ill. 98; 187 N.E. 914;
People v. *Schmidt*, 413 Ill. 80; 107 N.E. (2) 842;
Dean v. *Northern Trust Co.*, 259 Ill. 148; 102 N.E. 244;
Ryan v. *City of Chicago*, 363 Ill. 607; 2 N.E. (2) 913;
Kellogg v. *Kellogg*, 371 Ill. 241; 20 N.E. (2) 585;
City of Watseka v. *Wilson*, 11 Ill. 2d 265; 142 N.E. (2) 24;
The Village of Lansing v. *Hacker*, 7 Ill. 2d 258; 130 N.E. (2) 265;
Leffler v. *Browning*, 14 Ill. 2d 225; 151 N.E. (2) 342;
Terren v. *City of Chicago*, 413 Ill. 141; 108 N.E. (2) 476.

In the instant case the Petitioner did not attack the constitutionality of the civil practice act of Illinois or any of its sections. He only claimed error in its application to his alleged facts. The fact that the courts of Illinois did not agree with him he considered as a violation of his constitutional rights.

It is stated in the case of *Clifton M. Kimbrough, et al., Appellees*, v. *Harrison Parker, et al., Appellants*, 407 Ill. 274, 279, 95 N.E. 2d 473:

> "In this case no constitutional question was raised or passed upon in the trial court. The assignment of error made in this court can be construed only as a complaint that the court erred in its decision. The constitutional requirement of due process of law is not a guaranty that courts shall not commit error in the trial of causes, nor is it a guaranty against erroneous or unjust decisions by courts which have jurisdiction of the parties and the subject matter. Mere error in a judgment or decree does not deprive the losing party of the benefit of due process of law."

In the case of *The People* v. *Prpich*, 368 Ill. 169 at 170 the court says:

> "• • • He contends that the appointment of the conservator was in contravention of section 2 of article 2 of the Illinois constitution and of the fourteenth amendment to the Federal constitution, in that the proceeding purports to deprive the incompetent of his liberty and dominion over his property, and vested control of the property in the conservator without due process of law, and that it denies to the ward the equal protection of the law. No attack is made on the validity of any statute, but the charge is that the appointment of the conservator is void for want of conformity with the act. This does not involve a constitutional question. • • • "

This Honorable Court has approved the decisions and practice of the Illinois Courts and that, therefore, since the

Petitioner did not comply with the jurisdictional and the procedural requirements of the State of Illinois, he waived his right to raise either a State or a Federal constitutional question, and is not entitled to a writ of certiorari. (*Central Union Co.* v. *Edwardsville*, 269 U.S. 190, 194-5; *Pennsylvania Railroad Co.* v. *Illinois Brick Co.*, 297 U.S. 447, 462-5; *Parker* v. *Illinois*, 333 U.S. 571, 574-5; *Edelman* v. *California*, 344 U.S. 357, 358-9; *Hulbert* v. *City of Chicago*, 202 U.S. 275-577.) This Honorable Court stated in the case of *Lynch* v. *New York*, 293 U.S. 52, at page 54, as follows:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. *De Saussure* v. *Gaillard*, 127 U.S. 216, 234; *Johnson* v. *Risk*, 137 U.S. 300, 306, 307; *Wood Mowing & Reaping Machine Co.* v. *Skinner*, 139 U.S. 293, 295, 297; *Eustis* v. *Bolles*, 150 U.S. 361, 366, 367; *Whitney* v. *California*, 274 U.S. 357, 360, 361; *Mellon* v. *O'Neil*, 275 U.S. 212, 214. Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. *Allen* v. *Arguimbau*, 198 U.S. 149, 154, 155; *Johnson* v. *Risk*, supra; *Wood Mowing & Reaping Machine Co.* v. *Skinner*, supra; *Consolidated Turnpike Co.* v. *Norfolk & Ocean View Ry. Co.*, 228 U.S. 596, 599; *Cuyahoga River Power Co.* v. *Northern Realty Co.*, 244 U.S. 300, 302, 304; *Durley* v. *Mayo*, 351 U.S. 277, 281."

The cases in footnote 2 further hold that the State has full power to regulate its appellate procedure and that if it is not followed the right of appeal is lost and further sustains the above ruling.[2]

We respectfully contend that the instant case presents and involves questions determinable only under the State law. The jurisdiction over the person of the petitioner and the process by which the jurisdiction was obtained upon him are purely statutory matters. The decisions of the State courts construing the laws of practice and procedure are binding upon all other courts of the land, unless they are unreasonable. Here the Petitioner did not attack the validity of this statute under which he was adjudicated insane and under which his Conservator was appointed. He merely says that it was erroneously done and deliberately misapplied. The opinion of the Appellate Court of this case and the cases cited by it upholding the propriety and the constitutionality of the state laws concerning lunatics and conservators, we respectfully submit, are conclusive upon the subject.

Moreover, the Petitioner appeared in the County Court of Cook County and did not attack the judgment of the court declaring him insane, admitted that it was valid, and

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[2] *Lynch* v. *New York*, 293 U.S. 52, 54; *Radio Station WOW* v. *Johnson*, 326 U.S. 120; *Central Union Co.* v. *Edwardsville*, 269 U.S. 190, 194; *John* v. *Paulin*, 231 U.S. 583, 585; *Penn. R. Co.* v. *Ill. Brick Co.*, 297 U.S. 447, 462; *Stembridge* v. *Georgia*, 343 U.S. 541, 546-7; *Parker* v. *Illinois*, 333 U.S. 571, 574-575; *Chesapeake & Ohio Ry. Co.* v. *McDonald*, 214 U.S. 191; *Harding* v. *Illinois*, 196 Ill. 78; *American Surety Co.* v. *Baldwin*, 287 U.S. 156; *Edelman* v. *California*, 344 U.S. 357; *Hulbert* v. *City of Chicago*, 202 U.S. 275, 277.

asked that he be discharged, which was done. He appeared before the Probate Court of Cook County and did not attack its order of appointing a conservator of his estate, but recognized the judgment and asked that a conservator be discharged. He then accepted the proceeds of his estate. The courts of Illinois hold, as the opinion of the Appellate Court in this case does, that the Petitioner waived any error committed in the proceedings of adjudicating him a lunatic and in the proceedings of appointing a conservator of his estate. (The construction of the State statute by a State court is binding and its decision is not reviewable by the Supreme Court of the United States. *Guaranty Trust Co.* v. *Blodgett*, 287 U.S. 509, 513; *Bowe* v. *Scott*, 233 U.S. 658, 665. When the opinion of a State court does not mention anything about the validity of any statute as being repugnant to Federal law and the case was disposed of totally on an independent ground, this Honorable Court does not take jurisdiction. *New York Central* v. *New York*, 186 U.S. 269. The ruling of the State court on questions of pleading will not be reviewed by the United States Supreme Court. *Brinkmeier* v. *Missouri Pacific R. R. Co.*, 224 U.S. 268.)

The Federal courts must follow the State law and the interpretation of the law by the state courts, even though they are intermediate courts (as in this case), especially, when (as in this case) the highest court of review declined to take jurisdiction and consider the case (*West* v. *A. T. & T. Co.*, 311 U.S. 223; *McLouth Steel Co.* v. *Mesta Machine Co.*, 214 Fed. (2) 608; *Illiff* v. *American Fire Apparatus Co., Inc.*, 277 Fed. (2) 361; *Trust Co. of Chicago* v. *Penn. R. R. Co.*, 183 Fed. (2) 641.)

It is relevant and appropriate to mention here that the above rule especially applies in cases where the courts of

the State construe the statute of limitations. The decision of the State Court on questions of the validity and application of the statute of limitations are binding upon the federal court (*Brinkmeir* v. *Mo. Pac. Ry. Co.*, 224 U.S. 268; *Wood* v. *Chesborough*, 228 U.S. 672; *Preston* v. *City of Chicago*, 226 U.S. 447, 450).

Secondly, we respectfully contend that the above rule applies equally well where a state court construed the statute concerning Appellate procedure. Under this rule the instant case presents three problems. The first arises from the refusal of the Supreme Court of Illinois to take jurisdiction of the case on the first appeal and its transfer of it to the Appellate Court. The decisions of the Courts of the State of Illinois hold that such transfer removes from the case any constitutional or federal question and the appellate court cannot consider any constitutional or federal question but must proceed to decide the case on other grounds. The authorities are clear and conclusive.[3]

At the time of the consideration of the case by the Appellate Court of Illinois, it was conclusively decided that

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[3] *Board of Education, et al.* v. *Pacific National Fire Insurance Co.*, 153 N.E. (2) 498, 19 Ill. App. 2d 290; *Group Securities, Inc.* v. *Carpentier*, 147 N.E. (2) 360; *Schyman* v. *Department of Registration and Education*, 133 N.E. (2) 551, 553, 9 Ill. App. 2d 504, Certiorari Denied 352 U.S. 1001; *Village of Lansing* v. *Hacker*, 130 N.E. (2) 265, 7 Ill. (2) 258; *Community Unit School District No. 6* v. *County Board*, 128 N.E. (2) 898, 6 Ill. (2) 320; *In re Webster's Estate*, 171 N.E. (2) 24, 21 Ill. (2) 54; *Sitelis* v. *Mouhelis*, 141 N.E. (2) 92, 13 Ill. A. (2) 131; *City of Chicago* v. *Campbell*, 170 N.E. (2) 19, 20, 27 Ill. A. (2) 456; *People* v. *Taylor*, 172 N.E. (2) 519, 29 Ill. A. (2) 143; *Wlodek* v. *Sedlacek*, 174 N.E. (2) 705, 30 Ill. A. (2) 351.

there was no constitutional or federal question involved in the case. The Petitioner, however, now contends that the opinion and judgment of the Appellate Court of Illinois created a new constitutional question. That is not correct. Nowhere in the opinion of the Appellate court appears any presentation of any constitutional question and nowhere does it appear in the record that it considered and passed upon such a question and none was preserved for review. The Petitioner, therefore, creates a false issue here. It is the ruling of the Supreme Court of Illinois that the consideration and adjudication of any constitutional or federal question by the Illinois courts must appear affirmatively in the judgment entered by the court.

In the case of *Biagi* v. *O'Connor*, 163 N.E. (2) 461, at page 463; 18 Ill. (2) 238, the court says:

> "This court's jurisdiction, however, is based only on constitutional questions necessarily presented by the Appellate Court's judgment, not by questions suggested by the reasoning which led that court to its decision. *Kamienski* v. *Bluebird Air Service, Inc.*, 389 Ill. 462, 59 N.E. 2d 853; see *Wilson* v. *Chicago & Western Indiana Railroad Co.*, 363 Ill. 81, 1 N.E. 2d 224."

In the case of *Kage* v. *Kremer, et al.*, 169 N.E. (2) 357, at page 359; 20 Ill. 2d 148, the Supreme Court of Illinois again says:

> "It is well settled that jurisdiction of this court is based only on constitutional issues necessarily presented by the Appellate Court's judgment. It is not enough that constitutional questions may be suggested by the reasoning which influenced the court in reaching its decision. *Biagi* v. *O'Connor*, 18 Ill. 2d 238, 163 N.E. 2d 461; *Kamienski* v. *Bluebird Air Service, Inc.*, 389 Ill. 462, 59 N.E. 2d 853, 854."

Thirdly—after the Appellate Court rendered its judgment in the instant case, the Petitioner filed a direct appeal to the Supreme Court of Illinois claiming a constitutional and federal question were drawn in the case. The Supreme Court of Illinois, upon motion of the respondent, dismissed the appeal, stating that it was not well taken. By that appeal the petitioner raises three problems. Does that appeal waive the right of the Petitioner to file his petition for writ of certiorari before this Honorable Court?

The appeal stands dismissed as the case adjudicates that there was no constitutional or federal question involved. The Supreme Court of Illinois did not render an opinion in the matter and we respectfully contend that all reasonable implications and intendments are that it refused to take jurisdiction of the matter because it considered that there is no constitutional question in the case, and that it was satisfied with the judgment of the Appellate Court. We firmly believe that we have shown that no constitutional question arose out of the trial court or at the Appellate Court. It is therefore reasonable and fair to conclude that the Petitioner did not follow the procedural requirements of Appellate practice in Illinois. He did not file a petition for leave to appeal as is required by sections 74 and 75 of the Civil Practice Act and by Rule 32-1 (Appendix Exhibits 4a, 7a, 9a), of the Rules of the Supreme Court of Illinois and thus having not followed or exhausted the remedies provided by law he waived his right to come before this court and ask that a writ of certiorari be issued in his behalf (*Matthews* v. *Huwe*, 269 U.S. 262; *Stratton* v. *Stratton*, 239 U.S. 55; *Newman* v. *Gates*, 204 U.S. 89, 95; *Hammerstein* v. *Superior Court*, 341 U.S. 491, 492-493; *Hulbert* v. *City of Chicago*, 202 U.S. 275; *Cox* v. *Texas*, 202 U.S. 446, 452; *Louisville & Nashville R. R.* v. *Woodford*, 234 U.S. 46, 51).

The second problem that arises because of Petitioner's appeal not being well taken is, To what court should the writ be directed? We respectfully contend that the court that entered the final judgment in this case is the Appellate Court. It was there where the full record of the case was considered. It was there where both parties presented briefs and abstracts and argued the merits of the appeal. The cases hold that when a Supreme Court refuses to take jurisdiction of a case for purposes of review, the final judgment from which an appeal must be taken is the judgment of the court that rendered the judgment and decision and not from the order of refusal to consider the case by the Supreme Court. It is to the Appellate Court the writ should be directed. (*Norfolk Turnpike* v. *Virginia*, 225 U.S. 264; *Michigan Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157, 160; *Hammerstein* v. *Superior Court*, 341 U.S. 491; *American Ry. Express Co.* v. *Lever*, 263 U.S. 19; *Sullivan* v. *Texas*, 207 U.S. 416; *Chesapeake & Ohio Ry. Co.* v. *Mihas*, 280 U.S. 103; *Newman* v. *Gates*, 204 U.S. 89; *Awotin* v. *Atlas Exchange National Bank*, 295 U.S. 209, 210; *Senko* v. *LaCrosse Dredging Corp.*, 352 U.S. 370, 371.)

The third problem this wrongful appeal raises is, What record must be presented and from what Court must it come? The petitioner in this case presented to your Honors only his abstract of the record. It is clear that both his record and abstract are partial and incomplete. For example, the Appellate court's opinion mentions the affidavit of John Skontos. The Petitioner complains about it (Petition, page 10) because he says it should not have been considered, but does not make the affidavit as part of the record and he does not abstract it. He complains in his point 3, VII, page 9 of his Petition that "the Appellate Court's Decision adopted the comments and argument of the state trial court

and of the respondent, as evidence, contrary to what is shown on the face of the Record on Appeal." but does not bring up the transcript of the entire hearing or any part of it before the Trial Court, nor does he abstract it. The Trial Court had difficulty in understanding his claim and so did the Appellate Court (Opinion, page 63, Petitioner's Brief in the Supreme Court).

He failed to comply with Rule 38 of the Supreme Court of Illinois to bring up the record and present an abstract of it sufficient to adequately present the case to this Honorable Court. His appeal was dismissed.(*)

(*) In *Matson* v. *Holliday*, 25 Ill. App. (2) 90; 165 N.E. (2) 718, the syllabus states:

"The record filed in Reviewing Court must present fairly and intelligently the substance of those portions of the record on which error is assigned, and it is not the duty of successful litigant to supply deficiencies in the record."

Harris, et al. v. *Frank Annunzio, Director of Labor, et al.*, 411 Ill. 124 at page 126; 103 N.E. (2) 477.

At page 126 it is stated:

"* * * Rule 38 of this court, (Ill. Rev. Stat. 1949, Chap. 110, par. 259.38), requires the party prosecuting an appeal in this court to furnish a complete abstract of the record. Such abstract must be sufficient to present fully every error relied upon for reversal. In *Department of Finance* v. *Sheldon*, 381 Ill. 256, we held that the substance of the record should be abstracted so that it would not be necessary for the court to resort to the record to determine the issues presented; that everything necessary to decide the questions raised on appeal must appear in the abstract; and that failure of the abstract to properly present the error relied upon would warrant the court in affirming the judgment. In *Hayes* v. *Industrial Com.*,

Where the record presented to reviewing court shows that certain written or other evidence was introduced and was considered by the trial court but such evidence is not included in the transcript of the record, it will be presumed that the omitted evidence sustained the trial court's finding. (*People ex rel. Kozielec* v. *Caron*, 385 Ill. 76, 52 N.E. (2) 205; *Paul R. Simon* v. *Estate of Lothar V. Kny*, 19 Ill. App. 2d 509, 154 N.E. (2d) 327; *Smith* v. *Smith*, 5 Ill. App. 2d 383, 125 N.E. (2d) 693.)

We respectfully contend that the petitioner's contention that he had raised and asserted Constitutional questions in his pleadings in the State Trial Court (Petition 22) is not correct. None of his statements contained in his abstract is correct. They are mere general statements and not specific. Eight of the statements either refer to depriving the petitioner of his civil rights, or that defendant aimed to obstruct the administration of justice. Two of the other references are referable to the State Constitution and law and only four of his references mention the Federal Constitution. Those four are contained in the petitioner's reply to the answer of the respondent filed in the State Court. The respondent made no reference to any constitutional or Federal rights and, therefore, the petitioner could not deny

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(*) *Continued*

383 Ill. 272, we reviewed at some length previous decisions of this court concerning the application of the rule, and concluded that, where the abstract does not show any judgment entered by the trial court, the failure of the party bringing a case to this court to furnish a proper record and to properly abstract the same, so as to fully present the errors relied upon, was ground for affirmance."

that which was not asserted and, therefore, his negative assertion is a conclusion and not an affirmative statement that the court denied him due process of law or equal justice, under law. The decisions of this Honorable Court and of the Supreme Court of the State of Illinois make it clear that the general assertion of the petitioner that he raised and asserted his constitutional rights in the trial court is insufficient. We respectfully say it is untenable and frivolous.

The raising of the constitutional or federal question must not be a formal one. It must be a substantial question and not frivolous. *Equitable Life Assurance Society* v. *Brown*, 187 U.S. 308, 311; *Pennsylvania R. R. Co.* v. *Illinois Brick Co.*, 297 U.S. 447, 462-463.

A mere assertion that a constitutional question is involved, or a constitutional right was invaded, is not in itself sufficient to confer jurisdiction. *People* v. *Estep*, 97 N.E. (2) 823, 825; 409 Ill. 125, certiorari denied, 73 S. Ct. 1112; 345 U.S. 970.

A general assertion in the brief on appeal that petitioner's constitutional rights have been violated or that a Statute is unconstitutional is not sufficient to confer jurisdiction on the Supreme Court. *Scro* v. *Franke*, 20 Ill. (2) 70; 169 N.E. (2) 335, 337. *Memphis Natural Gas Co.* v. *Beeler, et al.*, 315 U.S. 649, 651; *Jett Bros. Distilling Co.* v. *City of Carrollton*, 252 U.S. 1, 5-6; *Stadelman* v. *Miner, et al.*, 246 U.S. 544; *French* v. *Taylor*, 199 U.S. 274.

In *Bowe* v. *Scott*, 233 U.S. 658, 664, it is stated: " 'That the ordinance is an attempt to take from your complainants whose property adjoins and abuts upon the said alley their rights in and to said alley without due process of law.' But it is settled that such an averment making no reference to the Constitution of the United States and asserting no ex-

press rights thereunder is solely referable to the State constitution, which in this instance has a due process clause, and affords no basis whatever for invoking the jurisdiction of this court. *Miller* v. *Cornwall R. R. Co.*, 168 U.S. 131, 134; *Harding* v. *Illinois*, 196 U.S. 78."

In *New York Central R. R. Co.* v. *New York*, 186 U.S. 269, at 273, it is stated: "But assuming, without intimating an opinion to that effect, that the raising of a Federal question in the brief might be sufficient, it is well settled in this court that it must be made to appear that some provision of the Federal, as distinguished from the state, Constitution was relied upon, and that such provision must be set forth."

The Federal question cannot be deduced by inference, *Oxley Stove Co.* v. *Butler Co.*, 166 U.S. 648, 655; *Thomas* v. *State of Iowa*, 209 U.S. 258; *Seno* v. *Franke*, 169 N.E. (2) 335; 20 Ill. (2) 70.

CONCLUSION.

For the reasons aforesaid, we respectfully submit that the petition of Petitioner for writ of certiorari be denied.

Respectfully submitted,

JOHN C. GEKAS, *Pro Se.*

JAMES P. ECONOMOS,
Of Counsel.

APPENDIX.

EXHIBIT A

At A Term Of The Appellate Court, begun and held at Chicago, on Tuesday, the Third day of October, in the year of our Lord, One Thousand Nine Hundred and Sixty-One, within and for the First District of the State of Illinois:

Present,
The Honorable Arthur J. Murphy, Presiding Justice;
" " Henry L. Burman, Justice;
" " Robert E. English, Justice.

Leslie V. Beck, Clerk — Frank G. Sain, Sheriff

Peter Skontos, also known as Panagiotis Skoundrianos, Appellant

No. 48390 vs.

John C. Gekas, Appellee

Monday, October 16th A.D. 1961

Error to .....

Appeal from Cook Superior

Superior Court No. 59 S 8012

On this day came again the said parties, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the Record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious, or defective and that in the Record there is no Error. Therefore, it is considered by the Court that the judgment aforesaid, be

(Appendix)

Affirmed in all things, and stand in Full Force And Effect, notwithstanding the said matters and things therein assigned for Error. And it is further considered by the Court that the said Appellee recover of and from the said Appellant, his costs, by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Leslie V. Beck, Clerk of the Appellate Court of the First District of the State of Illinois, and keeper of the records, files and seals thereof, Do Hereby Certify, that the foregoing is a true copy of the final order of the said Appellate Court in the above entitled cause of record in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 8th day of May in the year of our Lord One Thousand Nine Hundred and Sixty-Two.

/Sd/ Leslie V. Beck
Clerk of the Appellate Court of
the First District, Illinois.

(Seal)

(Appendix)

EXHIBIT B

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present:

Harry B. Hershey, Chief Justice
Joseph E. Daily, Justice
Walter V. Schaefer, Justice
Ray I. Klingbiel, Justice
Byron O. House, Justice
Roy J. Solfisburg, Jr., Justice
William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

Peter Skontos, also known as Panagiotis Skoundrianos, Appellant No. 37000 vs. John C. Gekas, Appellee	Appeal from Appellate Court First District 59 S 8012 48390

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellee to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

(Appendix)

And it is further considered by the Court, that the said appellee recover of and from the said appellant costs by him in this behalf expended, to [illegible] that he have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court, this 30th day of January, A. D. [illegible]

/s/ Mrs. Earle Benjamin Searcy
Clerk, Supreme Court of the State of Illinois

(Seal)

EXHIBIT C

"101.32 (Supreme Court Rule 32). Appeals from the Appellate Court to the Supreme Court.

(1) The party applying for leave to appeal from an Appellate Court shall file a petition in this court, stating therein the reasons for and grounds of appeal. The clerk of this court shall thereupon transmit a certificate of the filing of the petition to the clerk of the Appellate Court who shall transmit to the clerk of this court the record which was transmitted to the Appellate Court with a certified copy of the record of the Appellate Court appended thereto. In case the leave is not granted the record shall be returned forthwith to the clerk of the Appellate Court.

The petitioner shall file with his petition an abstract of the record as prescribed by rule. The petition shall be printed in the manner prescribed for briefs.

The petition shall contain a statement of the points relied upon for a reversal of the judgment, together with authorities and suggestions, concisely stated in support of the points, a prayer for leave to appeal, and a statement of the date upon which the judgment of the Appellate Court became final. The petition shall contain, or have attached thereto, a printed copy of the opinion of the Appellate Court. If the facts are correctly stated in the opinion they shall not be restated in the petition. If the facts are not so stated, the petitioner may, preliminary to his statement of points, note the inaccuracy or insufficiency and correct or supply the same.

A petition violating this rule will be stricken.

Fifteen copies of the petition and abstract, with proof of service, shall be filed within the time provided by statute. The respondent may file 15 printed copies of an answer to the petition, with proof of service, within the time provided by statute. The answer shall state briefly the points and authorities relied upon to meet or obviate the points of the petitioner, and to sustain the judgment. No reply to the answer shall be filed.

* * * * *

(3) In all criminal cases and in civil cases when notice of appeal as of right is filed in the Appellate Court the clerk shall, not later than 15 days thereafter, transmit to the clerk of this court the same record as provided in this rule in cases of leave to appeal, together with certified

copies of the notice of appeal and the proof of service. If the record has theretofore been transmitted to this court on petition for leave to appeal or on appeal by certificate of importance the clerk of the Appellate Court shall transmit only the certified copies of the notice of appeal and proof of service, which, together with the record theretofore filed in this Court, shall stand as the record on both appeals, without order of court."

EXHIBIT D

Illinois Supreme Court Rule 38.

"Abstracts. The party prosecuting an appeal in this court or an Appellate Court shall furnish an abstract of the record on appeal, referring to the pages of the record by numerals on the margin. If the record contains the evidence it shall be condensed in narrative form so as to present clearly and concisely its substance. The abstract shall be preceded by a complete index, alphabetically arranged, indicating the nature of each exhibit, i.e., Will, Trust Deed, Contract, and the like, and the page on which it may be found, and giving the names of the witnesses and the pages of the direct, cross and redirect examination. In cases brought from an Appellate Court the abstract filed in that court may be filed in this court by changing the cover and including an abstract of the record of the Appellate Court with an index thereto. The abstract need only be sufficient to present fully every error relied upon. Matters in the record on appeal not necessary for a full understanding of the questions presented for decision shall not

be abstracted. Upon motion and good cause shown after the filing of the record on appeal, the court or a judge thereof in vacation may dispense with the furnishing of an abstract or with the abstracting of matters in the record even though they are to be considered on appeal. The abstract will be taken to be accurate and sufficient unless the opposing party files an additional abstract, making necessary corrections or additions. The additional abstract may be filed without order of court."

EXHIBIT E

Illinois Revised Statutes, Chapter 110, Section 74.

"Method of Review.

(1) Every order, determination, decision, judgment or decree reviewable by the Supreme or Appellate Court of this State is subject to review by notice of appeal. The review shall be designated an appeal and constitutes a continuation of the proceeding in the trial court. The appeal presents to the reviewing court all issues which heretofore have been presented by appeal and writ of error. The right heretofore possessed by any person not a party to the record to review a judgment or decree by writ of error is preserved by notice of appeal.

(2) All distinctions between the common law record, the bill of exceptions and the certificate of evidence, for the purpose of determining what is properly before the reviewing court, are abolished. The trial court record shall include every writ, pleading, motion, order, affidavit, and

other documents filed or entered in the cause and, in addition, all matters before the trial court which are certified as a part of the record by the judge thereof. All matters in the trial court record actually before the court on appeal may be considered by the court for all purposes, but if not properly authenticated the court may order further authentication.

(3) Every order, determination, decision, judgment or decree of the Appellate Court heretofore reviewable by the Supreme Court by writ of error shall hereafter be reviewable only by appeal. The appeal shall be perfected by notice of appeal filed with the clerk of the Appellate Court within 40 days after the order, determination, decision, judgment or decree of the Appellate Court becomes final, either through denial of a petition for a rehearing or the expiration of the time within which a petition for rehearing might have been filed. The form and contents of notice of appeal shall be, as near as may be, as provided by rule of the Supreme Court for notice of appeal in the case of an appeal from a trial court. No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional. The appeal may be taken by any person heretofore entitled to sue out a writ of error. It presents to the Supreme Court all issues heretofore presented by writ of error, and constitutes a continuation of the proceeding in the Appellate Court. All steps subsequent to the filing of the notice of appeal shall be as provided by rule. As amended by act approved July 19, 1955. L. 1955, p. 2238."

(Appendix)

EXHIBIT F

Illinois Revised Statutes, Chapter 110, Section 75.

"Jurisdiction of Appellate and Supreme Courts.

(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved, (b) in all cases relating to revenue, or in which the State is interested as a party or otherwise and (c) in cases in which the validity of a municipal ordinance or county zoning ordinance or resolution is involved and in which the trial judge certifies that in his opinion the public interest so requires.

(2) In all cases in which their jurisdiction is invoked pursuant to law, except those wherein appeals are specifically required by the constitution of the State to be allowed from the Appellate Courts to the Supreme Court, the judgments or decrees of the Appellate Courts shall be final, subject however, to the following exceptions: (a) in case a majority of the judges of the Appellate Court or of any branch thereof shall be of the opinion that a case decided by them involves a question of such importance, either on account of principal or collateral interest, as that it should be passed upon by the Supreme Court, they may in such case grant leave to appeal to the Supreme Court on petition of parties to the cause, in which case the said Appellate Court shall certify to the Supreme Court the grounds of granting said appeal. (b) In any such case as is hereinbefore made final in the Appellate Courts it is competent for the Supreme Court to grant leave to appeal

for its review and determination with the same power and authority in the case, and with like effect, as if it had been carried by appeal to the Supreme Court. (c) In any case heard and determined in the trial court upon actual trial in which the Appellate Court upon appeal from the final judgment or decree entered in the cause in the trial court reverses the judgment or decree and remands the cause for a new trial or hearing, and in which the party in whose favor the trial court's judgment or decree was rendered presents to and files with the Appellate Court an affidavit stating that he will be unable on a future trial or hearing to adduce other or additional evidence, facts or circumstances that were adduced in the trial court and expressly waiving the right to a new trial or hearing and consenting and requesting that the portion of the judgment of the Appellate Court remanding the cause for new trial or hearing be deleted and stricken from the judgment of the Appellate Court, then that court upon motion shall amend its judgment by strking out the portion thereof remanding the cause for new trial or hearing. Thereupon it is competent for the Supreme Court to grant leave to appeal from such final judgment of reversal for its review and determination with the same power and authority in the case, and with like effect, as in other cases in which leave to appeal from the final judgments of the Appellate Courts is authorized in this section.

Provided, however, the application under this Act to the Supreme Court to cause it to grant leave to appeal for its review and determination shall be made within 40 days after the judgment of the Appellate Court has become final, either through the denial of a petition for rehearing or the expiration of the time within which a petition

for rehearing might be filed; otherwise the power of the Supreme Court to review the judgment and decree of the Appellate Court shall cease to exist. Answers to such petitions for leave to appeal may be filed by respondent within 15 days after the expiration of the time for the filing of the petition for leave to appeal or within such further time as the Supreme Court or some Justice thereof in vacation may grant, if granting within such 15-day period. As amended by act approved July 21, 1959. L. 1959, p. 1784."

EXHIBIT G

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of January, in the year of our Lord, one thousand nine hundred and sixty-one, within and for the State of Illinois.

Present:

Walter V. Schaefer, Chief Justice
Joseph E. Daily, Justice
George W. Bristow, Justice
Harry B. Hershey, Justice
Ray I. Klingbiel, Justice
Byron O. House, Justice
Roy J. Solfisburg, Jr., Justice
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searcy, Clerk

Peter Skontos, also known as Panagiotis Skoundrianos, Appellant

(48390)
No. 35856 vs.

John C. Gekas, Appellee

Appeal from Superior Court Cook County
59 S 8012

(Appendix)

And now, on this day, the Court having diligently examined and inspected the record and proceedings aforesaid as well as the briefs and argument filed herein, and now being fully advised in the premises is of the opinion, find, and adjudge that this case was wrongfully appealed to this Court.

Therefore, it is ordered by the Court that this case be and the same is hereby transferred to the Appellate Court for the First District of the State of Illinois, and the Clerk of this Court is directed to transmit the transcript and files herein with the order of this transfer to the Clerk of said Appellate Court.

And it is further ordered by the Court that the said appellee recover of and from the said appellant costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 24th day of January, A.D. 1961.

/s/ Mrs. Earle Benjamin Searcy,
Clerk, Supreme Court of the
State of Illinois.

(Seal)